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Tax Changes in the Netherlands; Dutch BV's to gain more prominence!



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Over years Indian companies have used The Netherlands as a Hub for holding their Global Investments. In lot of instances, they used Dutch Co-operative (Dutch Co-op) as a vehicle to hold their global investments since Dutch Co-op did not fall in ambit of Dutch withholding tax. With new changes as announced by Dutch Government, Dutch Co-op structures needs to be revisited. Another aspect of change relates to abolishing withholding tax on dividends in case of Dutch BV (private limited company). This will create more popularity for Dutch BV's in International Structures. In this article the author has explained the impact of the proposed Dutch tax changes vis--vis the need to relook at Indian structures using the Dutch Co-op.

Dutch are known to think out of box. This is certainly the case when it comes to taxation matters. With new changes Dutch Government have done a balancing act between Dutch Co-op and Dutch BV. Certainly new changes will make Dutch BV's more popular in International structures.

Background:

On 20 September 2016, the Dutch State Secretary of Finance sent a letter to the parliament in which it announced to amend the Dutch Dividend Withholding Tax Act 1965. This announcement was broadly made to eliminate the difference in treatment between (i) Dutch Co-op, and (ii) Dutch private/public companies. So with this announcement, firstly, Dutch co-op falls into the ambit of the Dutch dividend withholding tax rules and secondly, it abolishes Dutch dividend withholding tax in certain situations.

To understand this better it is important to understand the domestic law on Dutch Co-op and Dutch BV. Under Dutch Domestic Tax Law there is a withholding tax on dividends distribution of 15%. This may be reduced under the applicable tax treaty. On other hand Dutch Co-op has members with membership

rights instead of share capital and are generally² not subject to Dutch domestic withholding tax. Dutch Co-op has been widely used by Multinational companies (including Indian companies) in their structuring as withholding tax on dividends distribution was not applicable.

Overview of the changes in Dutch Domestic Law:

In earlier letters dated November 27, 2015 and February 2, 2016, the State Secretary had already announced that an analysis would be made of the difference in the tax treatment between Dutch Co-op on the one hand and Dutch BV on the other hand. As far as the Dutch government is concerned, this difference in tax treatment is not justifiable. Therefore, the Dutch government put forward a proposal to eliminate this difference in treatment. Based on the proposal, Dutch Co-op are to be treated in the same way as Dutch BV and as such should also be subject to Dutch dividend withholding tax.

Bringing the Dutch Co-op into the scope of the Dutch dividend withholding tax rules is accompanied by another change to the Dutch dividend withholding tax rules.